No. 10,425

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5, on behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and ALASKA PACKERS ASSOCIATION, a corporation; ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Appellees.

BRIEF FOR APPELLEES ALASKA PACKERS ASSOCIATION, ALASKA SALMON COMPANY AND RED SALMON CANNING COMPANY.

MARSHALL P. MADISON,
FRANCIS R. KIRKHAM,
MELVIN E. MENSOR,
PILLSBURY, MADISON & SUTRO,
Standard Oil Building, San Francisco, California,
FAULKNER & BANFIELD,
Juneau, Alaska,
Attorneys for Appellees Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company.

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Statutes

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BRIEF FOR APPELLEES ALASKA PACKERS ASSOCIATION, ALASKA SALMON COMPANY AND RED SALMON CANNING COMPANY.

STATEMENT AS TO JURISDICTION

This is an appeal from a judgment of the Alaska District Court, affirming a decision of the Alaska Unemployment Compensation Commission which denied in part

appellants' claims for benefits under the Alaska Unemployment Compensation Law.

Appellee, the Unemployment Compensation Commission of Alaska, is represented in this court by its own counsel. This brief is filed on behalf of the employers, Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, who will hereinafter be referred to as "employers".

The cause originated before the Commission on claims for unemployment benefits filed by appellants. The Commission held appellants disqualified for benefits for the statutory period of eight weeks[1] because their unemployment was due to a labor dispute (R. 608-609). On appeal the matter was heard before a referee who took testimony and held that a labor dispute existed up to certain dates but did not continue through the season. Accordingly he held appellants entitled to benefits from the dates he determined the dispute terminated (R. 608-643). The employers appealed to the full Commission. The Commission affirmed its initial determination (R. 644-649). Appellants petitioned for review in the District Court

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[1]Section 5(d) of the Alaska Unemployment Compensation Law provides:

> "*Disqualification for Benefits.* An individual shall be disqualified for benefits:
> * * * * * * *
>
> (d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute: * * *."

Other pertinent provisions of the Alaska Act are copied in the appendix to this brief.

(R. 650-672). That court affirmed the decision of the Commission,[2] and this appeal followed.

This court has jurisdiction of the appeal under the provisions of section 128 of the Judicial Code (28 U.S.C. §225).

STATEMENT OF THE CASE.

Employers own and have for many years operated salmon canneries in Alaska. Operations are carried on at three separate places—Chignik, Karluk and Bristol Bay (R. 712). Alaska Packers has plants at all three locations; Alaska Salmon and Red Salmon have plants only at Bristol Bay (R. 338-339, 559, 575). The operations are seasonal. At Chignik the season in 1940 was from April 1 to September 10; at Karluk, from April 5 to September 25; and at Bristol Bay, from May 5 to August 25.

Appellants, over 1300 in number, were salmon cannery workers employed by employers during the 1939 season (R. 31, 541-542, 598-605). Customarily such workers were hired in San Francisco each year to be sent to Alaska (R. 122-126, 713).

In 1939, as had been the practice for several seasons, employers entered into an agreement at San Francisco with appellant union (hereinafter referred to as the "Union") for the employment of men in the 1939 operations (R. 714). Shortly after the 1939 season this agree-

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[2]Decree, R. 719-720; Findings of Fact and Conclusions of Law, R. 711-718; Opinion, R. 692-710.

ment was terminated (R. 266-268, 610, 714), and correspondence was exchanged looking toward the negotiation and execution of an agreement covering the terms and conditions of employment of cannery workers for the 1940 season (R. 165, 262-263, 610, 714).

In the meantime, early in 1940, employers had formed a corporation known as Alaska Salmon Industry, Inc., to handle labor relations and labor negotiations of the Alaska salmon industry on the Pacific Coast (R. 260-261). This corporation, on behalf of employers, promptly notified the Union of its readiness to negotiate for the 1940 season (R. 262-263), and early in March appointments were made to commence negotiations (R. 272).

Controversy immediately arose. The Union submitted a proposed agreement for the 1940 season with demands for increased wages and for other conditions more favorable than those provided in the 1939 agreement (R. 317, 275, et seq.). The employers, however, had suffered losses on the operations of the preceding year under the wage scales provided in the 1939 agreement, and, in addition, were faced in 1940 with a curtailed and difficult season (R. 146, 152, 244, 572-573). Accordingly, they proposed reductions (R. 243).

A series of conferences was held during March (R. 330-331, 620-621). On April 1st the Union notified the employers that it was withdrawing from negotiations in San Francisco and that negotiations as to the 1940 agreement for San Francisco would be completed by the representatives of the Union in Seattle, where negotiations for a coastwise contract with the industry were being carried

on (R. 320-322). The employers promptly arranged to continue negotiations at Seattle (R. 339) and so advised the Union (R. 333). At the same time, the Union requested that certain questions other than wages be taken up in San Francisco, and discussion of these questions continued (R. 321-322).

In the meantime, the employers expended hundreds of thousands of dollars preparing for the season; ships were withheld from profitable charters and put in readiness to leave; cans, fishing gear, trucks, lumber and all other manner of equipment and supplies were acquired; all was in readiness, except the reaching of labor agreements (R. 530-536, 560-565).

As above pointed out, the fishing and canning season in Alaska is seasonal—at Chignik the season opened April 1; at Karluk, April 5—and the time was approaching when the expeditions would have to leave, if at all. On April 3 the employers notified the Union that if operations were to be carried on Karluk, it would be necessary to reach an agreement on or before April 10th; and if operations were to be carried on Chignik, it would be necessary to reach an agreement on or before April 12th. These dates were the "latest possible time that can be set," with no leeway for "unfavorable factors of weather, break down, etc." (R. 326). At the same time the employers submitted definite proposals relating to wages and other working conditions (R. 333, et seq.). On April 8th all of these proposals were rejected and charges of bad faith were made against the employers (R. 343, 623-625). On the same day, upon receipt of this notice,

the employers again notified the Union that they were willing to continue negotiations (R. 344-346), and the following day, as the Karluk deadline approached, the employers delivered a further letter to the Union reviewing the situation and pointing out that the companies were "desirous of operating under fair conditions, comparable with those established in competitive and allied industries, but we are unable to operate if you will not grant to us the same conditions that you have granted to other such employers" (R. 351).

The next day, April 10th, was the deadline for Karluk operations. In a final effort to end the dispute, the employers proposed a memorandum agreement under which the terms of the contract being negotiated at Seattle would be applicable to the Karluk operations (R. 355). Communications were exchanged and meetings were held through the day and evening. The Union, however, finally refused to sign (R. 358-363), and the Karluk deadline came and passed.

During the next two days negotiations continued as to Chignik (R. 364-372). Again the employers sought to obtain a last-minute memorandum agreement (R. 365-366), but the Union refused, charging the employers with bad faith and a "recalcitrant and arbitrary attitude" (R. 256-259). No agreement was reached and the last possible sailing date for Chignik operations also went by (R. 364-373).

At the Union hall notices were posted that if members did not obtain employment, applications for unemployment compensation could be filed (R. 599), and the dispute continued. The Union at all times took the position

that it must have the 1939 San Francisco wage scale or better (R. 506-507); the employers, that they were willing to accept the same terms as were agreed upon in Seattle for the rest of the industry, but simply could not continue to operate at a competitive disadvantage with its accompanying losses (R. 572-574).

Further meetings were held in an effort to agree on terms for work at the one remaining operation—Bristol Bay (R. 372-377). On April 26th the employers notified the men that appellee Alaska Salmon Company had abandoned its operations for 1940, and that Alaska Packers and Red Salmon Company would be compelled to abandon their operations unless agreements could be reached on or before midnight, May 3rd (R. 378-380), "the latest possible day from San Francisco without allowing a safety factor" (R. 521-522). The next day the employers again offered to sign a memorandum agreement under which the terms of the Seattle contract would be applicable to any expeditions from San Francisco (R. 381), but the Union adhered to its position that it would accept from the San Francisco operators nothing less than the 1939 San Francisco agreement (R. 244). As the deadline approached further communications were sent by the employers urging that negotiations be concluded (R. 382-393c); numerous meetings were held; definite and unqualified written proposals were made by the employers (R. 393e, 395-491); federal officials offered their services in an attempt to bring about an agreement and participated in last-minute meetings (R. 236, 499-502). The dispute continued, however, and the last possible sailing for Bristol Bay also came and passed.

The nature of the entire dispute may be summed up by quoting the testimony of one of the employers (R. 572-573):

> "The main thing, we were losing money for several years and felt that couldn't go on, not only for our own protection but for the entire industry and the workers. We felt we were being forced to operate at a disadvantage over the Seattle operators and we had to sell our pack in competition with them. * * * broadly speaking we insisted that we had to have some [reduction] because we had not been able to make any profit over several years."

and the testimony of one of the representatives of the employees (R. 243-244):

> "A general policy was established and formed at the very first meeting there has got to be substantial cuts. And that is the score!
>
> Q. Did they explain why they wanted substantial cuts?
>
> A. Yes. Said they was not making any dough.
>
> Q. And they said they wanted substantial cuts? Took that position throughout the negotiations?
>
> A. That is correct.
>
> * * * * * * *
>
> Q. It is a fact, isn't it—I think you have already testified to this—all the unions were told that the employers weren't making any money and that they wanted reductions from the 1939 agreement?
>
> A. That is right.
>
> Q. No offer was made by the union at any stage of the game for anything less than the 1939 agreement, was there?
>
> A. They don't! Unions are not in a practice of cutting down on gains that they have already got."

Immediately after May 3, appellants filed claims for unemployment compensation insurance with the Alaska Commission. These claims were promptly denied upon the ground that appellants' unemployment was due to a labor dispute (R. 608-609). The Union appealed, requesting a hearing before a referee in San Francisco (R. 3-5). This request was granted and extensive hearings were held at which evidence was submitted on behalf of both appellants and the employers (R. 25-608). The referee found that "There is no evidence to support the Union's contention that the Employers acted in bad faith in the course of the negotiations" (R. 628); that "All operations contemplated by the Employers and the Union for 1940 were abandoned for the reason that a mutually satisfactory working agreement was not negotiated by the dates set by the Employers, as the 'deadline' for the respective districts" (R. 633); that "A fair consideration of all the evidence submitted leaves no escape from the conclusion that a labor dispute existed and was in active progress between the Employers and the Union up to the expiration of the dates fixed by the Employers for the consummation of the working agreements for the respective plants" (R. 638); but that "the labor dispute ceased to be in active progress," as to the three districts, upon the expiration of the respective "deadline dates," since, upon those dates "the dispute which had raged between [the Employers] and the Union" came to an end (R. 640). Accordingly, the referee ordered that compensation be denied from the opening of the season up to the respective deadline dates, but be allowed for the balance of the season (R. 642-643).

The employers appealed to the full Commission. The Commission held that a labor dispute existed and continued and that appellants' unemployment was due to that dispute. Compensation accordingly was allowed, to commence after the expiration of eight weeks (R. 644-649). The District Court affirmed this decision.[9]

ARGUMENT.

I. THE QUESTION WHETHER APPELLANTS' UNEMPLOYMENT WAS DUE TO A LABOR DISPUTE IN PROGRESS AT EMPLOYERS' PLANTS IS A QUESTION OF FACT ON WHICH THE FINDING OF THE COMMISSION, BEING SUPPORTED BY SUBSTANTIAL EVIDENCE, IS CONCLUSIVE.

Section 6(i) of the Alaska Unemployment Compensation Law provides:

> "In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said Court shall be confined to questions of law."

The District Court found "that there was complete absence of fraud, and, therefore, the findings of the Commission are conclusive" (R. 717). This finding is correct and undisputed.

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[9]Opinion, R. 692-711; Findings of Fact, R. 711-717; Conclusions of Law, R. 717-718.

The Commission found (R. 648):

> "That there was an active labor dispute existing between said parties at the opening of the season; that said dispute continued * * *"[10]

It further found, necessarily,[11] that appellants' unemployment was due to this dispute.

The District Court found (R. 714-716):

> "5. * * * there was a labor dispute between petitioners and claimants, the Union and its members, on the one side, and the respondent companies on the other side, and this labor dispute continued and was never settled but remained in progress as hereinafter set forth.
>
> * * * * * * *
>
> 10. That the unemployment of claimants in the 1940 fishing and canning season, and the whole thereof, was due to [this] labor dispute."

It is settled that these findings of the Commission, concurred in by the District Court, are findings of fact on which the finding of the Commission, if supported by substantial evidence, is conclusive.

> "The first question before us is: Was the finding by the Commission that a labor dispute existed at

---

[10]This finding of the Commission is included in that part of its "Findings of Fact and Reasons for Decision" entitled "Conclusion and Decision". It is well settled, however, that an erroneous designation of a finding of fact as a "conclusion" or "conclusion of law" does not change its effect.

Bogan v. Hynes (9th C.C.A. 1933) 65 F. (2d) 524, 526;
O'Keith v. Johnston (9th C.C.A. 1942) 129 F. (2d) 889, 890;
Baldwin Rubber Co. v. Paine & Williams Co. (6th C.C.A. 1938) 99 F. (2d) 1, 3;
O'Reilly v. Campbell (1886) 116 U.S. 418.

[11]See *Labor Board v. Mackay Co.* (1938) 304 U.S. 333, 344, 349.

the Hampton Division, Pacific Mills, in Columbia, a finding of fact by the Commission that could not be disturbed by the Court on appeal? The answer to this question involves the determination of whether the Commission was justified in finding, as a matter of fact, that a labor dispute existed at that time and place.

* * * * * * *

This Court is of the opinion that the Commission had before it evidence which would justify its finding that the fact of a labor controversy or dispute was in active progress.

* * * * * * *

It is obvious, therefore, that it was not the intent of the Legislature to give the Courts the right to determine whether a labor dispute existed, for under Section 5 of the Act this right is patently given to the Commission, whose duty it is to determine by the testimony and the evidence in each case whether certain facts existed, among them, whether or not a labor dispute existed, as a matter of fact. Accordingly, in the instant case, the Commission has determined that a labor dispute did exist at the time and place under consideration, and has so declared by its findings; and by the express provisions of the Act, such findings are final, just as the findings of a petit jury on the facts are final. Neither the Circuit Court nor this Court can interfere with those findings.

* * * * * * *

Just as a labor dispute is a condition of fact under the statute, so is the issue as to whether the claimants' unemployment was directly due to it'' (*Johnson v. Pratt* (1942) 200 S. C. 315, 20 S.E. (2d) 865, 870-871).

> "The finding of fact by the Court of Appeals that petitioner's unemployment was the result of a 'labor dispute' in which he participated through his duly accredited agents is, as well understood and not here controverted, not subject to review by this Court" (*Ex parte Pesnell* (1940) 240 Ala. 457, 199 So. 726, cert. den., 313 U.S. 590).

The decisions of the Supreme Court of the United States furnish numerous precedents to the same effect.

Rochester Tel. Corp. v. U.S. (1939) 307 U.S. 125, involved section 2(b) of the Communications Act of 1934, which provides that the Federal Communications Commission shall not have jurisdiction over any carrier "engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carrier." The Commission, after a hearing, determined that the Rochester Telephone Corporation was under the "control" of the New York Telephone Company and was, therefore, not entitled to classification as a mere connecting carrier under section 2(b). The Supreme Court held that this finding was one of fact, conclusive upon the court if supported by substantial evidence (pp. 145-146):

> "The record amply justified the Communications Commission in making such findings. Investing the Commission with the duty of ascertaining 'control' of one company by another, Congress did not imply artificial tests of control. This is an issue of fact to be determined by the special circumstances of each

> case. So long as there is warrant in the record for the judgment of the expert body it must stand. The suggestion that the refusal to regard the New York ownership of only one third of the common stock of the Rochester as conclusive of the former's lack of control of the latter should invalidate the Commission's finding, disregards actualities in such intercorporate relations. Having found that the record permitted the Commission to draw the conclusion that it did, a court travels beyond its province to express concurrence therewith as an original question. 'The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' ''

South Chicago Co. v. Bassett (1940) 309 U.S. 251, involved comparable provisions of the Longshoremen's and Harbor Workers' Compensation Act. Section 3 of that Act provides that no compensation shall be payable in respect of the disability or death of a ''master or member of a crew of any vessel.'' The deputy commissioner determined that the employee in question was performing services on the vessel as a laborer, and not as a member of the crew. The Supreme Court held that this finding was one of fact, binding upon the courts (pp. 257-258):

> ''So far as the decision that this employee, who was at work on this vessel in navigable waters when he sustained his injuries, was or was not 'a member of a crew' turns on questions of fact, the authority to determine such questions has been confided by Congress to the deputy commissioner. Hence the Court of Appeals correctly ruled that his finding, if there was evidence to support it, was conclusive and

that it was the duty of the District Court to ascertain whether it was so supported and, if so, to give it effect without attempting a retrial. * * *

Petitioners urge that the question whether the decedent was a member of a 'crew' was a question of law. That is, that upon the undisputed facts the decedent must be held as a matter of law to have been a member of a 'crew' as distinguished from a longshoreman or laborer at work upon the vessel. We are unable so to conclude.

The word 'crew' does not have an absolutely unvarying legal significance."

Similarly in

Parker v. Motor Boat Sales (1941) 314 U.S. 244, 246,

and

Voehl v. Indemnity Ins. Co. (1933) 288 U.S. 162,

the court held that a finding by the deputy commissioner that an employee was acting "in the course of his employment" within the meaning of the Longshoremen's and Harbor Workers' Compensation Act was a finding of fact, conclusive upon the court if supported by substantial evidence. To the same effect see:

National Labor Relations Board v. Hearst Publications (1944) ..... U.S. ....., 64 S. Ct. 851, 860-861;

Dobson v. Commissioner (1943) 320 U.S. 489;

Labor Board v. Mackay Co. (1938) 304 U.S. 333, 344, 349;

Pacific G. & E. Co. v. Industrial Acc. Com. (1919) 180 Cal. 497, 499, 181 Pac. 788, 789.

It follows that the only question open on this appeal is whether there is substantial evidence to support the finding of the Commission, concurred in by the District Court, that appellants' unemployment was due to a labor dispute in progress at the employers' plant.

All four tribunals below concurred in a finding that a labor dispute existed—"raged" (R. 640)—between the employers and appellants, and the evidence already summarized above (supra, pp. 3-8), clearly supports this finding. Of these four tribunals only the referee expressed the view that the dispute terminated when the 1940 operations were abandoned. The Commission's contrary finding is manifestly correct. Other evidence aside, support for this finding appears in the evidence concerning the negotiations between appellant Union and the industry subsequent to the abandonment of the San Francisco operations. These subsequent negotiations in Seattle finally resulted in an agreement as to operations out of Portland and Seattle, but with the express exception that if any operation "was attempted out of San Francisco * * * a separate contract would have to be negotiated for San Francisco operations" (R. 503). In other words, the dispute as to the operations manned by San Francisco employees was still very much "in active progress."

Beyond this, all of the other evidence is consistent only with the finding that the dispute was in active progress. The employers intended to operate, and would have operated, their plants in Alaska at all three locations. They offered appellants work. Appellants through their col-

lective bargaining agents demanded higher wages and other terms of employment more favorable than the employers in good faith felt they could accept. Finally, appellants concertedly refused to work upon the conditions offered. Far from terminating on the date of this impasse, the dispute at that time ripened into open disagreement which continued through the season.

The most that can be said for appellants' contention is that the terms of the statute, "due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he was last employed" must be held as an absolute matter of law to mean that the dispute must be continually carried on by active disputation between the parties during the period for which compensation is sought. Obviously, such an application of the terms of the statute does violence to its meaning. Such an application would result in employees being entitled to benefits unless both parties continue their disputation by daily or periodic meetings at which either or both deliberately leave open the door for further suggestions or offers. Any ultimatum given at any stage would justify the contention that the "dispute" as such had ended and that subsequent efforts of the parties to get together were meaningless because the giving of the ultimatum, plus the maintenance of this position, resulted in the termination of the dispute as of the ultimatum's date. Take the supposititious case where the employer gives a wage ultimatum to a Union and the employees strike but subsequently go back to work at the wage rate proposed by the employer. Can it be said that the dispute is not in active progress after the date of the

ultimatum simply because the employer refused to consider any other proposal? The only fair and reasonable application to be made of the terms employed in the statute is to deny unemployment benefits to employees where their unemployment is due to a labor dispute directly applying to the plant or factory where the employees are or were last employed. In other words, the dispute must (a) be in active progress in the sense that it has not been settled so as to permit employment, and (b) it must pertain directly to the factory or plant in which the employee is or was employed. Such a clear and reasonable application of the terms of the statute was chosen as the correct one both by the Commission and by the District Court.

Appellants also suggest that their unemployment was not "due" to the labor dispute, but, as to Alaska Salmon Company, to the fact that that company called off its operations for reasons other than the failure to reach an agreement with the employees, and, as to all three companies, to the fact that the 1939 season had ended: that is to say, that their unemployment was due to the seasonal lay-off in 1939 (App. Br. pp. 39-42).

These contentions are without support in the record. Appellants were, of course, laid off at the end of the 1939 season, but their unemployment in 1940 was due entirely to the dispute concerning wages and other working conditions for that season. As to Alaska Salmon's operations, both the Commission and the District Court found that the unemployment at this company's plants, like that at the plants of Alaska Packers and Red Salmon,

was due to the labor dispute. This finding has direct support in the evidence.[12]

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[12]R. 523, 525, 587-588.

Appellants say, "It is admitted that Alaska Salmon Company called off its Bristol Bay season, and had other reasons than a failure to reach an agreement with the Union for so doing * * * *It follows unquestionably that all workers employed in Alaska by Alaska Salmon in 1939 are entitled to benefits.*" (App. Br. pp. 39-40.) This statement is incorrect. Alaska Salmon, it is true, had financial troubles which were due, among other things, to the losses suffered the previous season because of excessive labor costs (R. 525). Accordingly, counsel for this company stipulated that the reason Alaska Salmon did not operate was "not due solely and only to the existence of an alleged labor dispute" (R. 588). But this stipulation was distinctly qualified as follows (R. 588):

> "Referee Roden. Can't you go a little farther than that? The real cause was the fact that the Alaska Salmon Company was, well, financially embarrassed so it could not have operated even though an agreement had been reached between it and its proposed employes?
>
> Mr. Oliver. No, because that is not the case."

Direct evidence in the record supports the finding of the Commission that Alaska Salmon, as well as the other two companies, would have operated if satisfactory agreements with labor could have been consummated:

> "Q. Was there anything to indicate that so far as the Alaska Packers Association was concerned or the Red Salmon Canning Company was concerned or the Alaska Salmon Company prior to the date with regard to them that you have mentioned that they did not intend to go fishing and would go fishing and could go to Alaska with an expedition from San Francisco in the event a proper labor arrangement could be made with the unions involved?
>
> A. Every evidence that I had in addition to the statements that the operators, themselves, made to me which, I believed indicated a desire to go fishing and, indeed, had made partial preparations to complete their expeditions. There were some monies expended, equipment purchased, nets bought, cans purchased. There were some supplies and machinery purchased beyond that in preparation for the season of 1940, and those expenditures amounted to many thousands of dollars, in anticipation of an actual operation in 1940. The ships in addition that I have mentioned that were to be used for those expeditions were not chartered, although attractive charters were available" (Testimony of Paul St. Sure, R. 523).

II. THE DECISION OF THE COMMISSION AND OF THE COURT BELOW IS IN ACCORD WITH ALL OTHER DECISIONS UNDER COMPARABLE STATUTES.

The contentions made by appellants in this court are the same as those made below. These are answered—one and all—in the opinion of the District Court (R. 700-710), and decisions under comparable statutes are cited to sustain the conclusions reached by that court and by the Commission. Without repeating what is there said, we simply add the following citations to those made in the District Court's opinion:

Dallas Fuel Co. v. Horne (1941) 230 Iowa 1148, 300 N.W. 303;

Walter Bledsoe Coal Co. v. Review Board, Etc. (Ind. Sup. Ct., 1943) 46 N.E. (2d) 477;

Sandoval v. Industrial Commission (1942) 110 Colo. 108, 130 P. (2d) 930;

In re North River Logging Co. (1942) 15 Wash. (2d) 204, 130 P. (2d) 64;

Johnson v. Pratt (1942) 200 S.C. 315, 20 S.E. (2d) 865;

Moore Et Al. v. Board of Review (C.C., W. Va., 1940) C.C.H. Unemployment Insurance Service (W. Va.), par. 1980.01;

New Jersey Board of Review Decision No. BR-52L, C.C.H. Unemployment Insurance Service (N.J.), par. 1980.03;

Pennsylvania Board of Review Decision No. B-44-6-RG-503, C.C.H. Unemployment Insurance Service (Pa.), pars. 1980.013, 1980.019.

These cases and those cited by the District Court, namely:

Miners in General Group v. Hix (W. Va. Sup. Ct., 1941) 17 S.E. (2d) 810;

Department of Industrial Relations v. Pesnell (1940) 29 Ala. App. 528, 199 So. 720;

Ex parte Pesnell (1941) 240 Ala. 457, 199 So. 726 (cert. den., 313 U.S. 590);

Barnes v. Hall (1941) 285 Ky. 160, 146 S.W. (2d) 929;

Block Coal & Coke Co. v. United Mine Workers, Etc. (1941) 177 Tenn. 364, 148 S.W. (2d) 364;

Deshler Broom Factory v. Kinney (1942) 140 Neb. 889, 2 N.W. (2d) 332;

Latham v. State Unemployment Compensation Com'n (1941) 167 Ore. 371, 117 P. (2d) 971;[13]

answer each of appellants' contentions and support in every particular the decision of the court below. We know of no contrary authorities and appellants have found none to cite.

III. COMMENT ON APPELLANTS' AUTHORITIES.

The only court case cited by appellants is *United States ... Co. v. Unemployment C. Bd. of Review* (1940) 66 Ohio App. 329, 32 N.E. (2d) 763.[14] That case arose under a

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[13]Erroneously cited by the District Court as 117 P. (2d) 97 (R. 10).

[14]At the time appellants' brief was prepared this case appeared in C.C.H. Unemployment Insurance Service (Ohio) in par. 8111, and is so cited by appellants (App. Br. p. 32). The only report of the case now appearing in this service is a summary in paragraph 1980.013.

statute which provides for disqualification only in case of a strike.

The list of state unemployment commission rulings, cited at pages 40-42 of appellants' brief, goes only to a point which is not in dispute, namely, that disqualification for benefits comes only where unemployment is "due" to a labor dispute. The finding here is that the unemployment was due to a labor dispute—not to the ending of the previous fishing season or to any other cause—and this finding is overwhelmingly supported in the evidence. Other commission rulings cited in appellants' brief are manifestly not in point.

Wherever the questions involved in this case have arisen, they have been decided as they were by the Commission and by the court below. To illustrate, we refer to appellants' citation of three Indiana Commission rulings, these citations being to the C.C.H. Service where no sufficient statement is given to show the point involved.[15] In contrast, one of the cases cited by the District Court was from the Supreme Court of Indiana, where, in a similar situation arising under a similar statute, the court said (*Walter Bledsoe Coal Co. v. Review Board, Etc.*, 46 N.E. (2d) 477, 479):

> "It must be concluded that the purpose of the act was to provide benefits to those who were involuntarily out of employment, and not to finance those who were willingly and deliberately refusing to work because of a failure of their employers to accede to demands for higher wages."

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[15]App. Br. pp. 37, 41.

CONCLUSION.

We respectfully submit that the judgment of the District Court is correct and should be affirmed.

Dated, San Francisco, California,
June 1, 1944.

Respectfully submitted,

MARSHALL P. MADISON,
FRANCIS R. KIRKHAM,
MELVIN E. MENSOR,
PILLSBURY, MADISON & SUTRO,
FAULKNER & BANFIELD,
Attorneys for Appellees
Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company.

(Appendix Follows.)

Appendix

ALASKA UNEMPLOYMENT COMPENSATION LAW.

(Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws, 1939)

Be it enacted by the Legislature of the Territory of Alaska:

Declaration of Territorial Public Policy. As a guide to the interpretation and application of this Act, the public policy of this Territory is declared to be as follows:

Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used

for the benefit of persons unemployed through no fault of their own.

* * * * * * *

Section 5. Disqualification for Benefits. An individual shall be disqualified for benefits:

* * * * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute;

* * * * * * *

Section 6. Claims for Benefits.

* * * * * *

(b) "Initial Determination." An examiner designated by the Commission shall take the claim. An initial determination thereon shall be made promptly and shall include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration of benefits. In any case in which the payment or denial of benefits will be determined by the provisions of section 5(d) of this Act, the examiner shall promptly transmit all the evidence with respect to that subsection to the Commission. The Commission, or such representative as it may designate for such purpose, shall, on the basis of the evidence so submitted and such additional evidence as it may require, make an initial determination with respect thereto. An initial determination may for good cause be reconsidered. * * * The claimant

or any party to the determination may file an appeal from such initial determination * * *.

(c) "Appeals." An appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall unless such appeal is withdrawn affirm or modify the findings of fact and initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of the section.

(d) "Appeal Tribunals." To hear and decide disputed claims, the Commission shall appoint one or more impartial appeal tribunals consisting in each case of a referee, selected in accordance with Section 11(d) of this Act. No person shall participate on behalf of the Commission in any case in which he is an interested party.

(e) "Commission." The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties of such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties to a decision of an appeal tribunal, and by the examiner whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard

by a quorum thereof in accordance with the requirements of subsection (c) of this Section. The Commission shall promptly notify the parties to any proceedings of its findings and decisions.

* * * * * * *

(h) "Appeal to Courts." Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Commission and designated by it for that purpose, or at the Commission's request by the Attorney General.

(i) "Court Review." Within thirty days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such decision, in which action any other party to the proceeding before the Commission shall be made a defendant. * * * In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. * * * An appeal may be taken from the decision of the United States District Court as is provided in civil cases.